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WATER POLLUTION:

Court bars enviro group from suing SoCal agency for 8 years

Debra Kahn, E&E reporter

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Correction appended.

A federal judge dismissed a Clean Water Act lawsuit against a Southern California water agency with a rare finding of prejudice against the environmental group that brought the suit.

U.S. District Judge Virginia Phillips on Tuesday approved a judgment in U.S. District Court for the Central District of California dismissing California River Watch's claims against Eastern Municipal Water District for allegedly discharging sewage into Temescal Creek, a tributary of the Santa Ana River in Riverside County.

Accompanying the judgment to dismiss was a stipulation banning the group from suing the agency under the Clean Water Act for eight years.

"CRW agrees not to commence any future legal action against Eastern Municipal Water District relating to alleged violations of the Clean Water Act for a period of eight years," it says. The group also agreed not to sue the district in its wastewater treatment capacity under any other environmental law for the same time period.

The water and wastewater treatment district said the settlement was a triumph over California River Watch, which had sued in January 2015 but moved to dismiss the suit last month. A lawyer representing the district said the Clean Water Act is structured to encourage defendants to settle and avoid protracted legal fees, rather than put up a fight in court.

"Very few Clean Water Act citizen suit cases are litigated on the merits simply because the incentives are all in the direction of settling," said Christopher Carr, an attorney with the San Francisco office of Morrison & Foerster LLP who represented the water district. "It's often quite rational from a business perspective, especially for public agencies. ... The usual response is to just roll over and say, 'What do you want?'"

Eastern Municipal had questioned the standing of California River Watch to bring a citizens' suit under the Clean Water Act. The environmental group is based in Northern California, but its co-founder and legal counsel, Jack Silver, argued that he owns a home in Los Angeles and visits EMWD's territory at least once a year. Before Silver was scheduled to give his deposition on his standing, the group moved to dismiss the case.

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Silver said the group dropped the case because it had more important suits it was pursuing. "This is not the first time River Watch has dropped a case after initial discovery," Silver said in an email. "As with the other cases River Watch dropped the EMWD case as it had more pressing cases to address." River Watch lists 15 other active cases on its website, most against California cities for alleged Clean Water Act violations.

"This lawsuit was nothing more than an attempt to unjustly take money from our ratepayers by trying to compel us into a quick settlement," EMWD General Manager Paul Jones said. "We hope that other organizations targeted by Mr. Silver and River Watch will use this as a road map in defending themselves from similar lawsuits."

Still unexamined is whether EMWD violated the Clean Water Act by exceeding discharges allowed within its National Pollutant Discharge Elimination System permits. River Watch had alleged that EMWD had 41 sewer overflows from January 2010 through August 2015, about 195,000 gallons of which reached surface waters. It also alleged that the water district was underestimating the volumes that reached surface waters.

Correction: An earlier version of this article had a lawyer representing the water and wastewater treatment district saying the Clean Water Act is structured to encourage plaintiffs to settle and avoid protracted legal fees; it should be defendants.

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